

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

Delta Financial Corp.  
dba Delta Home Loans  
ATTN: Stephen LaLonde, Vice President  
2715 E. Oakland Park Blvd #200  
Ft. Lauderdale, FL 33306

Enforcement Case No. 03-1213

Respondent

\_\_\_\_\_ /

Issued and entered this  
19<sup>th</sup> day of September, 2004  
By Linda A. Watters  
Commissioner

ORDER TO CEASE AND DESIST PURSUANT TO MCL 445.1666

I.

BACKGROUND

On or about November 2001, Delta Financial Corp. (Respondent) acted as a mortgage broker in a certain mortgage loan transaction involving borrowers xxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxx and relative to property commonly known as xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Respondent was not, and currently is not, licensed or registered as required by the Mortgage Brokers, Lenders and Servicers Licensing Act, as amended, MCL 445.1651 *et seq.*

II.

ORDER TO CEASE AND DESIST PURSUANT TO MCL 445.1666

Based on the facts set forth in the background above,

IT IS ORDERED that Respondent, its officers, directors, employees and agents shall immediately CEASE AND DESIST from engaging in any mortgage broker, mortgage lending or mortgage servicing activities in the state of Michigan which are or should be regulated under the provisions of the MBLSLA.

III.

APPLICABLE LAW AND PENALTIES

445.1652 License or registration required; exemption; residential mortgage originator; compensation; words contained in name or assumed name.

Sec. 2.

(1) A person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act, unless 1 or more of the following apply:

(a) The person is solely performing services as an employee of only 1 mortgage broker, mortgage lender, or mortgage servicer.

(b) The person is exempted from the act under section 25.

(c) The person is licensed as a class I licensee under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(2) A person that is licensed to make regulatory loans under the regulatory loan act of 1963, 1939 PA 21, MCL 493.1 to 493.25, or is licensed to make secondary mortgage loans under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and is registered with the commissioner shall file with the commissioner an application for a license under section 3(1) or shall discontinue all activities that are subject to this act.

(3) Unless a residential mortgage originator is otherwise licensed or registered under this act, a residential mortgage originator shall not receive directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits from a mortgage broker, mortgage lender, or mortgage servicer other than the employer of the residential mortgage originator.

(4) Unless a residential mortgage originator is otherwise licensed or registered under this act, a mortgage broker, mortgage lender, or mortgage servicer shall not pay directly or indirectly any compensation, commission, fee, points, or other remuneration or benefits to a residential mortgage originator other than an employee of the mortgage broker, mortgage lender, or mortgage servicer. As used in this subsection and subsection (3), "residential

mortgage originator” means a person who assists another person in obtaining a mortgage loan.

(5) A mortgage broker, mortgage lender, or mortgage servicer that was exempt from regulation under this act and is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company that does not maintain a main office or branch office in this state, shall register under section 6 or shall discontinue all activities subject to this act.

(6) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, the person subject to this act shall not include in its name or assumed name, the words “bank”, “banker”, “banking”, “banc”, “bankcorp”, “bancorp”, or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee or registrant to use the term “mortgage banker” or “mortgage banking” in its name or assumed name. A person subject to this act whose name or assumed name on January 1, 1995 contained a word prohibited by this section may continue to use the name or assumed name.

445.1666 Cease and desist order; hearing; violation; injunction.

Sec. 16.

(1) After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act.

(2) A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order.

445.1679 Prohibited conduct; misdemeanor; penalty; violation of act or rules; civil fine; suspension or revocation of license or registration; refusal to issue or renew license; proceedings subject to §§ 24.201 to 24.328; bona fide error.

Sec. 29.

(1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 3 years, or both:

- (a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act.
- (b) Transfers or assigns a mortgage loan or a security directly representing an interest in 1 or more mortgage loans before the disbursement of 75% or more of the proceeds of the mortgage loan to, or for the benefit of, the borrower. This subdivision does not apply to any of the following:
  - (i) A land contract not considered to be an equitable mortgage.
  - (ii) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the loan proceeds for a limited period of time.
  - (iii) A construction loan.
  - (iv) A loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the mortgage loan.
- (c) Transfers or assigns a mortgage loan or a security representing an interest in 1 or more mortgage loans to an individual investor unless 1 or more of the following apply:
  - (i) The transfer or assignment is made through a broker-dealer which is a member of the New York stock exchange.
  - (ii) The transfer or assignment is made through a broker-dealer who meets all of the following criteria:
    - (A) The broker-dealer is registered under the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws.
    - (B) The broker-dealer is not an affiliate of the mortgage lender unless the person acquired the broker-dealer registration, directly or indirectly, before September 1, 1987 under Act No. 265 of the Public Acts of 1964, was affiliated with a mortgage lender before September 1, 1987, and has continuously maintained that registration subsequent to September 1, 1987. For purposes of this subparagraph, if an aggregate of more than 10% of the outstanding voting stock or interest in a corporation, unincorporated organization, partnership, or other legal entity that is a broker-dealer or mortgage lender is sold, transferred, assigned, or otherwise conveyed subsequent to September 1, 1987, the registration shall be considered to not have been continuously maintained.
    - (C) The broker-dealer acquired the mortgage loan or security on a firm commitment.
  - (iii) The transfer or assignment is made to a person who the transferor or assignor believes, or has reasonable grounds to believe, is 1 of the following:
    - (A) A business entity having either net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of \$1,000,000.00 at the time of purchase.
    - (B) An individual who, after the purchase, has an investment of more than \$50,000.00 in such loans or securities, including installment payments to be made within 1 year after purchase by the individual, has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00, and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment, or has obtained the advice of an attorney, certified public accountant, or investment adviser registered under the investment advisers

act of 1940, or an investment adviser registered under Act No. 265 of the Public Acts of 1964 with respect to the merits and risks of the prospective investment.

(iv) A transferor or assignor does not maintain its principal place of business in this state and the transferee or assignee is not a resident of this state and does not maintain its principal place of business in this state.

(2) If the commissioner finds that a licensee or registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee or registrant of not more than \$1,000.00 for each violation, except that the licensee, registrant, or a person shall not be fined more than \$10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(4) Subsection (2) does not apply to a violation of this act that results from a bona fide error that occurs notwithstanding the adoption and observance of reasonable procedures intended to prevent the occurrence of the error.

#### IV

#### NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE HEARING

Respondent shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of this order.

The Commissioner of OFIS specifically retains jurisdiction of the matter herein to issue such further orders as the Commissioner deems just, necessary or appropriate to assure compliance with the law and to protect the public interest.

Any further communication regarding this Order should be directed to Laurence Wood, the Commissioner's representative at Office of Financial and Insurance Services, P.O. Box 30220, Lansing, MI 48909, Phone: (517) 373-2887.

---

Linda A. Watters  
Commissioner